SINGLE BENCH

C.S. 100 — 3

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ petition no. 4192/2005

(Petition under article 226/227 of the constitution of India)

PETITIONER : Nirmal Kumar Agrawal, S/o. Moolchand Agrawal, aged about 42 years, at present working as Principal in govt. High School Tilai, Distt. Rajnandgaon, Chhattisgarh.

P.R. No. 4309/05 Presented by Shri Vishnu Kosta dated 24/8/05

VERSUS

RESPONDENTS :1) State of Chhattisgarh, through the Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)

2) The Chhattisgarh Public Service Commission through its Secretary, Raipur, Distt. Raipur (C.G.)

3) District Education Officer, Rajnandgaon,Distt. Rajnandgaon (C.G.)

4) Hemant Upadhyay

5) R. Bamra,.

Respondent no. 4 & 5 through the Secretary Education Department D.K.S. Bhawan, Raipur (C.G.)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT OF MANDAMUS/CERTIORARI, ORDER / ORDERS, DIRECTION/DIRECTIONS ETC.

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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

JUDGEMENT

(Common Judgment passed in W.Ps. No. 599/2005, 433/2005, 598/2005, 524/2005, 312/2005, 287/2005, 21/2005, 4192/2005 and 718/2005.)

(The original Judgment will be kept in W.P. No. 599/2005 and a photocopy of the same shall be placed in other cases.)

JUDGMENT

Post for 16-11-2005

Sd/-
Sunil Kumar Sinha
Judge

Seen Free Counsel for the petitioner 4/05

Seen Counsel for the petitioner in W.P. No. 718/05

Seen Koshta Counsel for Petitioner in W.P. No. 4192/2005

Seen Counsel for the respondents in W.P. 21/05

Noted MC Sharma Advocate

Noted RMS Advocate 16.11.05

Seen.

APR 209

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.599/2005

Mohanlal Jaiswal and others

Vs.

State of Chhattisgarh and others

W.P.No.433/2005

Deepak Dubey

Vs.

State of Chhattisgarh & others

W.P.No.598/2005

Alok Sharma and another

Vs.

State of Chhattisgarh and others

W.P.No.524/2005

Ram Niwas Singh

Vs.

State of Chhattisgarh and others

W.P.No.312/2005

Nand Kishore Dwivedi & others

Vs.

State of Chhattisgarh & others

W.P.No.287/2005

Nawin Kishore Pradhan

Vs.

C.G. Public Service Commission & others

W.P.No.21/2005

Smt. Chhaya Tiwari

Vs.

C.G. Public Service Commission & others

(205)

W.P.No.4192/2005

Nermal Kumar Agrawal

Vs.

State of Chhattisgarh and others

W.P.No.718/2005

Smt. Sunita Sao

Vs.

C.G. Public Service Commission & others

Appearance for the petitioners:

Shri P.K.C. Tiwari, Sr. Advocate with Mr.Avinash Kumar Mishra, Shri Shashi Bhushan, Shri Shushant Tiwary, Prashant Tiwari, Advocates in W.P.No.21/2005.

Shri Manindra Shrivastava, Sr. Advocate with Shri Ashish Shrivastava, Shri Afroz Khan, Smt. Smita Ghai, Shri Amit Verma, Advocates in W.P.No.599 / 2005, W.P.No.433/2005 and W.P.No.598/05.

Shri Pritinkar Diwakar, Sr. Advocate with Shri Veerendra Sharma, Bharat Rajput, Anoop Majumdar, Kunal Das, Advocates in W.P.No.312/2005

Shri Rajeev Shrivastava, Advocate and Shri V.C. Ottalwar Advocate in W.P.No.524/2005.

Shri Vishnu Koshta, Advocate in W.P.No.4192/2005.

Smt. Fouzia Mirza and Smt. Reema Dubey, Advocates in W.P.No.718/2005.

Shri Raghavendra Pradhan and Shri Sanjay Agrawal, Advocates in W.P.No.287/2005.

Appearance for the State/Chhattisgarh Public Service Commission and Private Respondents:

Shri Pramod Kumar Verma, Additional Advocate General.

Shri Prashant Mishra, Sr. Advocate with Shri B.D.Guru and Shri Y.C. Sharma, Advocates for the Chhattisgarh Public Service Commission.

Shri Rajendra Tiwari, Sr. Advocate and Shri H.B. Agrawal, Sr. Advocate with Shri Prateek Sharma, Shri N.K. Vyas, Shri R. K. Kesarwani for the private respondents.

JUDGMENT
(16.11.2005)

Sunil Kumar Sinha, J,

1. By way of these writ petitions filed under Article 226/227 of the Constitution of India, the petitioners, who are either unsuccessful candidates or have not been called in interview arranged for selection to the posts of Deputy Director, School Education; Principal (DIET) and Professor (Shiksha Maha Vidyalay Samvarg) have challenged the legality and validity of selection of successful candidates to the said posts.

2. The brief facts are that the Chhattisgarh Public Service Commission issued an advertisement No.05/2003/ Chayan/ dated 04.7.2003 published in Employment News *"Rojgar Niyojana"* dated 09.7.2003 inviting applications for direct recruitment to the aforesaid 3 categories of posts. There were six posts advertised for Deputy Director, two posts for Principal (DIET) and two posts for Professor (Shiksha Mahavidyalaya Samvarg). Out of six posts of Deputy Director, 3 posts were shown to be in general category and one post was reserved for scheduled caste, one for scheduled tribe and one was reserved for OBC category. Among the 3 posts of general category, one post was shown to be reserved for women category. In Principal (DIET), one post was kept in general category and one was kept in scheduled tribe category. Like wise in Professor (Shiksha Mahavidyalaya Samvarg) one post was kept in general category and one was kept reserved in scheduled tribe category. For eligibility, many other conditions pertaining to the educational qualifications and experience were also published alongwith the criteria of age limits etc. Apart from the above, the

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Commission also published method of selection/recruitment vide Column 11 of the aforesaid advertisement and it was mentioned therein that if the number of application forms received by the Commission would be relatively less and in the opinion of the Commission a written examination would not be necessary, then the posts may be filled in only on the basis of interview conducted by the Commission. However, if the number of application forms would be more than the ratio of the posts advertised and it would not be practicable for the Commission to interview each of the candidates then the Commission may arrange for the written examination to reduce the number of candidates to be called for interview in the ratio of 1:3.

3. Thereafter, a Corrigendum/Addendum dated 17.5.2004 was published in "Rojgar Niyojan" dated 19.5.2004 indicating that on the basis of Memo No.F-1-204/2003/20, dated 27.4.2004 of the concerned department one unreserved post of Deputy Director, was withdrawn/reduced and it was published that now the selection would taken place for 5 posts of Deputy Directors making particular statement that two posts shall be reserved for general category, one for S.C., one for S.T., and one for O.B.C.

4. After receiving the application forms, the Public Service Commission vide its meeting dated 08.10.2004 decided to hold the interviews only to select the candidates for recommendation. According to the return of the Public Service Commission, the decision to hold interview only, was taken after finding that number of applications are less than 500. All the eligible candidates were sent interview cards and the interviews were held by the Commission from 03.01.2005 to 08.01.2005. After

completion of the process of interview, the results were declared on 17.1.2005 and the recommendations according to the said results were sent to the State Government. It is at this stage, the unsuccessful candidates, who offered for the various posts, have challenged the result and selection of the Public Service Commission dated 17.1.2005 in various writ petitions.

5. The petitioner of W.P.No.433/2005 namely Deepak Dubey was a candidate for the post of Deputy Director as well as Principal (DIET). One post of Deputy Director in the general category, which was withdrawn, was filled up by the Government without taking recourse of the Public Service Commission and one Dr. Hare Ram Sharma (respondent no.3 in this petition), who was working on the post of District Education Officer, was appointed to the Post. The petitioner challenges his appointment on the ground that his direct recruitment to the post of Deputy Director after withdrawing one post during the process of selection is unfair and is further against the provisions of Rule 6 of the ***M.P.(C.G) Education Service (School Branch) Recruitment & Promotion Rules 1982*** (hereinafter referred to as "***the Rules 1982***"). His contention is that the process adopted in case of respondent no.3 is unknown to law, bypassing the provisions of Rule 6. The other ground taken in this writ petition is about selection of respondent no.4 (Smt.R. Bhamra) who has also been selected to the post of Deputy Director. It is contended that she has been shown to be selected against the reserved category of women in the category of general candidates. It is further contended that after withdrawal of one post by the Government out of 3 general category posts of Deputy Director, only two posts of Deputy Director were left with the Public Service

Commission and if the Commission has appointed a lady against the reserved post then the reservation for the ladies exceeds the percentage of 30% as has been prescribed under the ***M.P. (C.G) Civil Seva (Mahilaon Ki Hetu Vishesh Upbandh) Niyam, 1997*** (hereinafter referred to as the **Rules 1997**). The submission is that if one post is reserved for the women in general category out of available two posts, the reservation goes upto 50% which is beyond the permissible limit of 30% and the same violates the rules. He also submits that respondent no.4 does not fulfill the experience criteria, , as she was working as the Vice Principal which is not an administrative post and on this ground also her selection is bad in law. The petitioner has also challenged the selection of Hemant Upadhyay (respondent no.5) on the ground that he was not at all eligible for consideration in terms of rule 8 of Rules 1982 in as much as on 01.01.2004, his age exceeded the upper age limit of 38 years prescribed under the Rules. This petitioner is also aggrieved as his candidature for the post of Principal (DIET) was not accepted. In this regard, the submission is that he fulfils the entire qualification, therefore, he was illegally denied consideration for the post of Principal (DIET).

6. The petitioners in W.P.No.312/2005 are the 7 unsuccessful candidates who had appeared in the interview for respective posts. They are mainly challenging the method of selection adopted by the Public Service Commission by taking interview only. Their contention is that as per Column No.11 of the Advertisement, in the facts and circumstances of this case, the Public Service Commission was under obligation to conduct a written test and thereafter an interview and then to count the marks obtained by a

candidate in both. They also contain that the less meritorious candidates have been selected. They have challenged the selection of Smt.R.Bambra (respondent no.3 herein) on the ground that she was not having requisite administrative experience. They have also challenged the selection of Sadhana Agrawal (respondent no.4) showing that she was also not having requisite experience and have also challenged the selection of Hemant Upadhyaya (respondent no.5 herein) alleging that he too was lagging in qualification of experience. Selection of Gand Ram Chandrakar (respondent No.6) has been challenged on the ground that his caste certificate of the State of Chhattisgarh was not produced. The selection of respondent no.7 Ghanshyam Netam has been challenged alleging that he does not possess the basic experience as required.

7. W.P.No.599/2005 has been filed by 4 unsuccessful candidates who had also participated in the interview. They have also challenged the selection of Dr. Hareram Sharma (respondent no.3 herein) on account of violation of Rule 6 of the aforesaid Rules of 1982. They have further challenged the selection of Smt. R.Bambra (respondent no.4) on the same grounds as have been taken in W.P.No.433/2005. Apart from this, they have also challenged the selection of Shri G.R. Chandrakar (respondent no.5) who has been selected in O.B.C. category for the post of the Deputy Director alleging it to be contrary to the Rules as according to the petitioners, the respondent no.5 does not fulfill the eligibility criteria of administrative experience as required under the rules and the advertisement.

8. W.P.No.524/2005 has been filed by one Shri Ram Niwas Singh who was a candidate for the post of Deputy Director, in general category. He appeared in the interview and ultimately, when the results were declared, his name was shown to be at second position in the general list, but he was to be in supplementary list at serial no.1 for the reason that out of six posts advertised, his selection was made only against five posts as one post was wrongly withdrawn by the Government and was filled in by directly absorbing Dr. Hareram Sharma. The contention of the petitioner is that if three posts would have been there in the general category then even after leaving one post for women reservation, two posts would have been there for the male general candidates and the petitioner being at Serial No.2 in the merit list would have been selected. In fact, selection of respondent no.5 has been challenged being violative of rule 6 of the aforesaid Rules of 1982 and it is contended that if the selection of respondent no.5 is set aside, the petitioner will automatically stand selected being at serial no.2 in the select list of general male category. This petitioner has not challenged the process of selection etc.

9. W.P.No.718/2005 has been filed by one Smt. Sunita Sao, who was a woman candidate for the post of Deputy Director and has appeared in the interview. While challenging the selection of Smt.R. Bambra (respondent no.2 herein) on ground of lack of administrative experience, this petitioner has also taken an additional ground that she being more qualified than Smt. R. Bambra, was not selected by the Public Service Commission and her name finds place at Serial No.1 in the wait list in general women category. She prays for quashing of the entire selection.

10. W.P.No.598/2005 and W.P.No.287/2005 have been filed by the petitioners who had participated in the interview for the selection to the post of Principal (DIET). They have challenged the selection of Sadhana Agrawal who has been declared selected and have also challenged the selection of Hemant Upadhyaya and Prabodh Adhikari whose names have been placed at Serial No.1 and 2 in the supplementary list (wait list) prepared for the post of Principal (DIET) in general category. They have taken the ground that these persons do not fulfill the requisite qualification of experience required for this post.

11. W.P.No.4192/2005 has been filed by one Nirmal Kumar Agrawal who appeared in interview for the post of the Deputy Director. He has challenged the selection of Smt. R. Bambra and Hemant Upadhyaya (respondents no.4 and 5 herein) on the ground that the selection had to take place according to the Act No.5 of 1984 namely The Madhya Pradesh Lok Seva Ayog (Prakriya Ka Viniyaman) Adhiniyam 1984. The submission is that the provisions of the aforesaid Act have not been complied and correct procedure for allocation of marks were not adopted and if the correct procedure would have been adopted, the petitioner would have been selected instead of respondents no.4 & 5.

12. W.P.No.21/2005 has been filed by one Smt. Chhaya Tiwari who has challenged the validity of communication dated 07.12.2004 informing her that her application for the post of Deputy Director, Education, has been rejected on the ground that she does not fulfill the criteria of experience published in the advertisement under the Rules. In fact, she has challenged the rejection of her application form on various grounds.

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13. The Public Service Commission has filed its return in W.P. No.433 of 2005 and has denied the contentions raised by the petitioner and this very return has been requested to be considered as the return in all the cases. The State Government has also filed its return in W.P.No.599/2005 and has almost supported the contentions of the Public Service Commission. The private respondents filed their reply in some of their respective cases, but the stand taken by them justifying their selection, is one and the same in all the matters.

14. I have heard learned counsel for the respective parties at length and have also perused the records of all the writ petitions.

15. Firstly, I am taking up W.P.No.4192/2005 for consideration. As stated above, the petitioner in this writ petition challenging the selection, was a candidate for the post of Deputy Director. He has challenged the selection of Hemant Upadhyaya and Smt. R. Bambra (respondents No.4 & 5 herein) on the ground that the Public Service Commission has not followed the provisions of ***The Madhya Pradesh Lok Seva Ayog (Prakriya Ka Viniyaman) Adhiniyam 1984 (Act No.5 of 1984)***. Referring to clause (vi) of sub-section (1) of Section 4 of the Act learned counsel submits that section 4 prescribes for procedure in the matter of recruitment to a service or post by selection. He further submits that the aforesaid sub-clause postulates that if the selection is by interview only, due credit for the past academic career of a candidate shall be given. Learned counsel submits that if the marks would have been allocated in the manner indicated in the Act, 1984, certainly the petitioner would have been selected in place of respondents no.4 & 5, because the petitioner retains a better educational qualification

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for which he would have been allocated better marks than the private respondents. On the contrary, learned counsel for the State as well as Public Service Commission refer to the provisions of ***M.P(C.G) Lok Seva Ayog (Prakriya Ka Vinimayan) Nirsan Adhiniyam, 1986 (Act No.19 of 1986)*** (available at M.P.Laws Manual, Second Edition, Volume No.8, Pg.722) and submit that on the commencement of this Act No.19 of 1986 on 26th of May 1986 and by virtue of section 2 of the said Act, the entire Act No.5 of 1984 namely the ***The M.P (C.G) Lok Seva Ayog (Prakriya Ka Viniyaman) Adhiniyam 1984*** has been repealed. The submission is that the petitioner cannot take the ground for allocation of marks on the basis of the provisions of a repealed Act, therefore, the petition has no merit and the same should be dismissed.

I have carefully gone through the provisions of the old Act No.5 of 1984 and the new Act No.19 of 1986. Indeed the new Act which has received the assent of the Governor on 16th of May 1986 and the assent first published in M.P.(C.G) Gazette (Extraordinary) dated 26th of May 1986, has repealed the entire provisions of the Act No.5 of 1984. It is a settled principle that except as to transactions passed and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. (Please see the Principles of Statutory Interpretations by Justice G.P. Singh 6th Edition page 411) Therefore, the question of considering the case of the petitioner for non allocation of proper marks according to the provisions of the repealed Act, which in fact has been repealed in the year 1986 itself, does not arise. There is no merit in this

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petition. Hence, W.P.No.4192/2005 is dismissed on this count alone.

16. In W.P.No.21/2005, the submission of learned counsel for the petitioner is that the petitioner was fully eligible for calling in interview to the post of Deputy Director. He submits that the public service commission committed an error by rejecting the application form of the petitioner on the ground of not having requisite experience. On the other hand learned counsel for the Public Service Commission rebuts and submits that the rejection of the application form was proper. He argues that the form of the petitioner was rejected on the ground that she had not furnished requisite certificates of experience as was required by the commission. He refers to the experience clause of the advertisement vide Column No.2 (Annexure P-2) and further refers to column No.9 and submits that since the petitioner had not annexed the certificates pertaining to her experience which was one of the essential conditions for eligibility and appointment, her application form was rightly rejected by the Commission. I have considered the arguments advanced by both the counsels. There is an essential requirement as per the advertisement (Annexure P-2) that the persons applying for the post of Deputy Director must have an experience of 10 years in teaching Higher Secondary Classes and he/she must also have 3 years administrative experience. Column No.9 postulates that the application form must be accompanied with the certificates and if the certificates so directed will not be annexed, the Application Form shall be treated as incomplete and the same shall be rejected and no further correspondence therefor shall be entertained by the commission.

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The submission of learned counsel for the petitioner is that the details of certificates to be attached have been mentioned in various sub-columns of column No.9, but in this column there is no mention of any experience certificate, therefore, if the experience certificate was not annexed with the application form (Annexure R-3), the application form would not have been treated as incomplete and the same would not have been rejected on this ground.

I have carefully perused the provisions of this column and have also perused the application form of the petitioner which has been filed as Annexure R-3 by the Commission. Admittedly, the application form is a prescribed form which has many columns. Column no.10 deals with the educational qualifications and column no.11 deals with the details of the previous services rendered by a candidate. In case the application form is filled in by a person employed or worked in any institution he/she has to furnish details in the prescribed tabular form in this column. There are vertical sub-columns in the tabular form for mentioning the certificate number and there are also specific instructions that for supporting the educational qualification and the service experience, a candidate shall have to annex the certificates accordingly. Therefore, after a conjoint reading of the advertisements as well as the application form, it would appear that furnishing of details and certificates in support of educational qualifications and also in support of the experience, in case of previously employed persons, was a must and if any application form is not supported by these necessary documents, they were liable to be rejected. I am taking this view because the very

purpose for asking these details including the service details is to ascertain about the suitability of a candidate to be called for examination and to see that no person with less qualification or who is ineligible for these posts, on the basis of prescribed rules, may appear in the examination to create further complications. The scrutiny of the application form is a work of responsibility because the same gives the first implied grant to a candidate showing his/her eligibility for appearance in the examination. In the present case, a perusal of the application form of the petitioner (Annexure R-3) would show that all the columns regarding production of requisite certificates about the educational qualifications as well as experience have been left blank and have not been filled in by the petitioner. In fact, the application form of the petitioner was dispatched incomplete without furnishing requisite certificates in this regard and when such a form, after scrutiny, has been rejected by the Commission, in the opinion of this Court, the Commission has not committed any mistake and the rejection of the application form and communication of the same vide Annexure P-1 is reasonable and proper. I do not find any merit in this writ petition. The same deserves to be and is hereby dismissed.

17. In other writ petitions bearing No.599/2005, 433/2005, 598/2005, 524/2005, 312/2005, 287/2005 and 718/2005, the grounds taken are more or less similar in nature and at the arguments learned counsel for the respective petitioners pressed and raised the following common points **only** :

(1) Whether the Government was competent to withdraw one post after advertisement and the appointment of

Dr. Hare Ram Sharma against such post was proper and in accordance with law and in case his appointment is set aside, Shri Ram Niwas Singh (petitioner in W.P.No.524/2005) will get advantage and will be treated as selected ?

(2) Whether the selection of Smt. R. Bambra against the reserved woman post in general category goes against the women reservation rules of the Government and the same was unjustified ?

(3) Whether the post of Vice Principal is an administrative post and the experience thereof can be treated as the administrative experience as per the criteria of the advertisement ?

(4) Whether the selection of Hemant Upadhyaya was against the rules as it violates the provisions of the age prescribed under the rules ?

(5) Whether the method of selection adopted by the Public Service Commission was improper and illegal and the less meritorious candidates have been selected in interview ?

(6) Whether the selection of Sadhna Agrawal, Ghan Shyam Netam on the post of Principal (DIET), were illegal as they were not having requisite experience?

(7) Whether the selection of Shri Gend Ram Chandrakar was improper? and whether the refusal of candidature of Deepak Dubey petitioner in W.P. No. 433/2005 for the post of Principal (DIET) was unjustified?

(8) Whether the selection of Hemant Upadhyaya and Prabodh Adhikari whose names have been placed at Serial No.1 & 2 in the supplementary list (waiting list) of Principal (DIET) in general category was illegal as they were not having requisite qualifications for this post ?

POINT No.1

18. The first question to be considered under this point is about the withdrawal of one post by the Government in the category of Deputy Directors. Admittedly, at the first instance by advertisement dated 04.7.2003, six posts of Deputy Directors were advertised by the Public Service Commission and among these six posts, 3 posts were kept in general category. However, by an order

dated 27.4.2004, one unreserved post was withdrawn/reduced by the Government and it was published by Corrigendum dated 17.5.2004 that now the selection would take place for 5 posts of Dy.Directors. This Corrigendum was published in *Rojgar Aur Niyojan* dated 19.5.2004. Admittedly, the interviews were conducted by the Commission in between 3.01.2005 and 08.1.2005. therefore, it is clear that the number of posts for selection in the general category of Deputy Directors were declared and made known to the public by way of Corrigendum much prior to the date of commencement of the interviews and it cannot be said that the candidates or the petitioners were not aware of this factual position prior to their interviews.

18.1 Though the counsel for the petitioners argued that the Government was not competent to reduce the number of posts after the first advertisement, as the same prejudiced the candidates but none of the counsels could point out any such law which may prohibit the government to reduce the number of posts in particular category that too much prior to the date of commencement of the examination. If we look into the 1st advertisement dated 4th July 2003, there is an endorsement to this effect in this advertisement itself that the number of posts shown in the advertisement, are changeable. When the law in relation to a particular procedure to be adopted in a particular circumstance is silent and an action is taken by the Government in a general manner then the same cannot be condemned unless it is shown to be arbitrary or whimsical. The procedural fairness is the main requirement in the administrative action of the Government. The scenario would have been different if the number of posts would

have been reduced either after the date of examination or after the selection process was over or at the time much closer to the date of examination. Even otherwise also, the relevancy of number of posts in a competitive examination, so far as the candidates are concerned, is only to the effect that candidate prepares himself for appearing in the examination/interview looking to the proportionate competition in the same. If the number of posts are less, the competition becomes tough and if the number of posts are more, it becomes comparatively easier. Here in the present case, looking to the date of advertisement and further looking to the date of interviews, these factors may not be of much importance as the gap between these two dates is near about 7 ½ months. A notice about reduction of one post prior to 7 ½ months of the date of interview would cause no prejudice to the candidates, so far as their preparation for the examination is concerned. Moreover, none of the petitioners has earlier challenged this action of the Government by filing any writ petition prior to the declaration of the result. All the petitioners who were the candidates for the post of Deputy Director took a chance by appearing in the interview knowing fully well that the number of posts have been reduced by the Government on 27.4.2004 and after taking the chance when they became unsuccessful, then only, they are raising this point and are challenging the action of the state Government in this regard. I am not inclined to accept the argument advanced in this regard and I accordingly reject it by holding that on an exigency, the Government was competent to reduce the number of posts provided the same was required bonafidely and the procedure adopted was fair and the action was not arbitrary. Whether all

these factors were there in the present case will be examined later on.

18.2 Now coming to the second question of this part regarding appointment of Dr. Hare Ram Sharma, the appointment letter of Dr. Hare Ram Sharma has been filed as Annexure P-4 in W.P.No.524/2005. This appointment letter was issued to him on 22.9.2003. It appears from the contents of the aforesaid letter that Dr. Sharma, who was holding the substantive post of Assistant Professor and was on deputation as District Education Officer, was appointed by absorption as the Dy. Director, Education under certain conditions. Though one post of Deputy Director was withdrawn from the purview of Commission on 27.4.2004 but the appointment of Shri Sharma was made on 22.9.2003 i.e., much prior to the date of withdrawal of the said post. The State has admitted vide Para 11 of its return filed in W.P.No.599/2005 that the appointment of Dr. Sharma was made against that very post which was intentionally withdrawn from the purview of Commission vide memo dated 27.4.2004. The situation for issuance of appointment letter on 22.9.2003 and withdrawal of the post from the purview of P.S.C. after about 7 months on 27.4.2004 is unexplained by the State. Neither in the return nor in the arguments, learned counsel for the State could justify the act of issuance of this order of appointment by the Government even prior to the withdrawal and availability of the post in their hand. The Apex Court in the matter of ***National Institute of Mental Health & Neuro Sciences, -Vs- Dr.K.Kalyana Raman and others, AIR 1992 S.C. 1806*** has laid down the principle that procedural fairness is the main requirement in the administrative

action. The "fairness" or "fair procedure" in the administrative action ought to be observed. The Apex Court in the particular facts and circumstances of that case, held that even the selection committee cannot be an exception to this principle and it must take a decision reasonably without being guided by extraneous or irrelevant consideration.

18.3 During the course of arguments, an office file of the Government bearing No.F-1/2004/2003/20 was shown to this Court which shows that the appointment dated 22.9.2003 was issued to Dr. Sharma in anticipation of concurrence of the Public service Commission, which was deferred by the Public Service Commission vide its letter dated 14th of Nov. 2003, but even after being deferred once, another request was made by the Government and ultimately, the Government withdrew one post from the purview of Public Service Commission on 27.4.2004. The record would further show that it was an intentional withdrawal particularly for justifying the earlier appointment of Dr.H.R. Sharma. It is all this, how the appointment of Dr. H.R. Sharma on 22.9.2003 was justified by the Government. In the opinion of this Court, this does not confirm the test of procedural fairness in the aforesaid administrative action taken by the State about withdrawal of one post and further about the appointment of Shri Sharma and I hold accordingly. Now I come to the question of validity of appointment. The contention of the Government is that this appointment was made by method of absorption. The submission of Shri Manindra shrivastava, Sr. Advocate who appears in W.P.No.433/2005, is that the appointments to this post should have been done by either of the modes prescribed in rule 6

of the Rules of 1982 referred to above. He submits that rule 6 prescribes 3 modes of appointment. One by direct recruitment, second by promotion and the third by transfer. He further submits that a perusal of these provisions along-with the provisions contained in schedule III would show that the appointment of Dr. H.R. Sharma is not covered under any of these categories, therefore, the same should be struck down. Per contra, Shri Rajendra Tiwari, Sr. Advocate appearing on behalf of Dr. H.R. Sharma submits that the appointment of Dr. Sharma was strictly under sub-rule (iv) of rule 6. He further submits that he was directly appointed by adopting the method of absorption under sub-rule (iv) and the appointment does not suffer from any illegality.

18.4 Rules pertaining to the appointment to these posts are the rules of 1982, referred to above. These rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 6 of the aforesaid rules deals with the method of recruitment. Rule 6 is quoted as under:

> (6) **Method of recruitment**,-- (i) "Recruitment" to the service, after the commencement of these rules, shall be made by the following method, viz.-
>
> (a) through direct recruitment,
>
> (b) by promotion of members of the M.P. Education Service from a lower post/cadre as specified in column (2) of Schedule IV to a higher post/cadre.
>
> (c) By transfer of persons from such cadre/ service as may be specified in Column(5) of Schedule-II
>
> (ii) The number of persons recruited under clause (b) or clause (c) of sub-rule(i) shall not at any time exceed the percentage of the number of duty posts as shown in the schedule-II.

(iii) Subject to provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the Government in consultation with the commission.

(iv) Notwithstanding anything contained in sub-rule (i) if in the opinion of the Government the exigencies of the service so require, the Government may with the approval of the General Administration Department adopt such methods of recruitment to the service other than those specified in the said sub-rules as it may, by order issued in the behalf, prescribe.

18.5 A bare perusal of sub rule (iv) of Rule 6 would show that notwithstanding anything contained in sub-rule (i) regarding recruitment to the said post, if such situation arises, the Government may with the approval of General Administration Department, adopt such methods of recruitment other than above, as it may, by order issued in this behalf, prescribe. No doubt, these provisions give jurisdiction and authority to the Government to make appointment by other than the method specified under sub-rule(i), but for exercising the powers under this rule, certain conditions are required to be fulfilled. The first condition is that the Government must form an opinion that there is such exigency of service which requires exercising jurisdiction under this sub-rule. The second condition is the Government will have to obtain approval from the G.A.D. for adopting such method of recruitment which it intends to adopt and the third is the method so adopted by the Government must be prescribed by an order issued in this behalf. Unless these three conditions are fulfilled, no other method of recruitment than the method prescribed in sub-rule (i) of Rule 6

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can be adopted by the Government. In the present case, the Govt. could not show any exigency of service on which any other method than the method prescribed under sub rule (i) of Rule 6 was immediately required to be adopted. It could not show that in fact, prior to issuance of appointment letter dated 22.9.2003, the Govt. had formed an opinion that one post of the Deputy Director is immediately required to be filled in on the basis of exigencies of service and for this some method other than the method prescribed under sub-rule(i) of rule 6 should be adopted. Even the Government could not show that an approval of G.A.D. for adopting such method, which has been adopted in case of the present appointment, was obtained. Learned counsel for the respondent tried to justify by arguing about the approval of G.A.D. that there is no rule that the approval must be taken prior to the appointment, therefore, the Government may take approval later on. This argument cannot be accepted in light of the provisions of sub-rule (iv) of Rule 6. This sub-rule clearly indicates that the approval of the G.A.D had to be obtained for the purpose of adopting a particular method of recruitment and not about the recruitment as is being argued on behalf of respondent. If the approval has been directed to be obtained about the method of recruitment to be adopted then certainly it is an indication on the part of legislature that the approval of the GAD must be obtained prior to the recruitment or appointment or selection of the candidate. In the present case, no such approval has been shown to be obtained by the Government, either prior to the appointment or even after the appointment. The third important factor is that before exercising the powers for recruitment under Sub-Rule (iv),

the method of recruitment which had to be adopted by the Government must be prescribed by some order issued by the Government in that behalf. In the present case, the Government could not show any such order issued under the provisions of sub-rule (iv) of rule (6). It appears that casually, after issuance of appointment letter dated 22.09.2003, the Government as well as the private respondent are taking assistance of sub-rule (iv) of rule 6 and are trying to classify the action of the State under the provisions of this sub-rule (iv). However, neither the letter of appointment dated 22.9.2003 nor the complete file of absorption which has been shown to this court indicate that the action of the State was taken under the provisions of sub-rule(iv) of Rule 6 by fulfilling all the above criteria which are necessary for exercising powers under the aforesaid Rule.

18.6 Learned counsel for the respondent then contended that the appointment of respondent no.4, by way of absorption, was on the basis of Circular dated 06th January 1986. I have gone through the said Circular. This Circular, in fact, deals with the provisions of deputation and it would not be supporting the case of the present respondent.

18.7 In the result, I hold that though on an exigency, the Government was competent to reduce the number of posts, but in the present case, the procedure adopted by the Government for reducing one post from the purview of the P.S.C. was not fair and the action was arbitrary. Further, the declaration of appointment of Dr. H.R.Sharma against the aforesaid post was not justified as the same was not in accordance with the provisions of rule 6 of the aforesaid Rules 1982 and I accordingly set aside the same.

Consequently the appointment order dated 22.9.2003 issued to Dr. H.R. Sharma is quashed.

18.8 Now coming to the last ground under point no.1 as to whether after setting aside the appointment of Dr.H.R. Sharma, the petitioner in W.P.No.524/2005 Shri Ram Niwas Singh will get advantage ? In the facts and circumstances of this case, even after quashing of the appointment of Dr. H.R. Sharma, this petitioner would not get advantage. The reason being that the appointment of Dr.H.R. Sharma was made against a post which was withdrawn from the purview of the Commission on 27.4.2004 that is much prior to the date of examination and ultimately the interviews for the post of Deputy Directors were conducted only for two posts in general category. That is to say that this particular post against which Dr. H.R. Sharma was appointed was not within the purview of P.S.C. and even if his appointment is set aside it is not going to affect the results of the interviews conducted by the P.S.C. Therefore, change of the position of the petitioner from serial no.1 in the supplementary list (waiting list) of Deputy Directors to Sl.No.2 in the select list of the said post in consequence of quashing of the appointment order of Dr.H.R.Sharma cannot be made. Hence, W.P.No.524/05 succeeds in part to the extent of quashing of the order of appointment of Dr.H.R. Sharma.

POINT No.2

19. Admittedly, Smt. R. Bambra has been shown to be selected on the post of Deputy Director against a reserved post for women in the category of general candidates. Her selection has been challenged on the basis of such reservation. The submission is that according to the Rules of 1997 referred to above, 30%

reservation was permissible and if one post out of two posts in general category shall be reserved for women, it goes to 50% and the same is violative of these rules. If we see the advertisement dated 04.07.2003, it would appear that when the three posts were available in general category, then one post was reserved for women. However, when the corrigendum was issued on 19.5.2004 and one post was withdrawn, it was particularly mentioned in the corrigendum that after withdrawal of the said one post from the general category, now out of total 5 posts available, two posts shall be available for general category, one for S.C., one for S.T., and one for O.B.C. In the corrigendum, though the details of posts reserved in various categories have been given, but it has never been stated that out of these two posts available in general category, one post shall be reserved for women as it was very specifically stated in the first advertisement dated 04.7.2003. In this manner, on comparison of these two declarations one in advertisement and the other in corrigendum, it would appear that no post was kept reserved for women in the general category after issuance of corrigendum, but ultimately the P.S.C. declared the result of Smt. R. Bambra as selected in women reserved category of general candidates. If we examinethe rules of 1997, it would appear that in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India, these rules were framed by the State in the year 1997. Rule 3 of these Rules provides that notwithstanding anything contained in any service rule, in case of a direct recruitment, in State service 30% posts among all the posts shall be reserved for women candidates and the said reservation shall be horizontal as well as vertical. An explanation

to this rule has also been added which explains that for the purpose of this rule, horizontal as well as vertical reservation would mean reservation in all the categories i.e., in Scheduled Caste, Scheduled Tribe, O.B.C., and General Category. This finally means that in case of a direct recruitment, 30% seats shall be reserved for women candidates in S.C., S.T., O.B.C., and in General Category also, then it would satisfy the requirement of horizontal as well as vertical reservation as provided under Rule 3 of the Rules 1997. This legal position has not been disputed by either of the parties. However, in light of the arguments advanced by learned counsel for the petitioners, the dispute comes around the fact that whether the selection of Smt. Bambra showing it to be against the post of women unreserved category is justified because of the availability of two general posts only.

19.1 Learned Counsel for the private respondent submits that 30% of two would come to 0.6, which is certainly more than 0.5, therefore, the rule of rounding off based on logic and common sense should be applied and it should be treated as 1 and in this sense, the Commission does not fall in error if it has treated one post as reserved for women applying the principles of horizontal and vertical reservation as per the Rules of 1997. He refers to two decisions of the Apex Court rendered in the matter of ***State of U.P. and another –Vs- Pawan Kumar Tiwari and others (2005) 2 SCC 10*** and ***Rajesh Kumar Gupta and others –Vs- State of U.P. and others, 2005 AIR SCW 2731***. In the first case, the Apex Court directed that the rule of rounding off based on logic and common sense is that if part is one half or more, its value shall be increased to 1 and if part is less than half then its value shall be

ignored. While dealing with the matter where the number of candidates were 93, the Apex Court laid down this rule holding that a fraction of 46.5 should have been rounded off to 47 and not to 46 as was done in that case. The apex Court further held that since the total number of vacancies were 93 and in consequence of allocation of reservation and calculation done by the appellants, the number of reserved seats would be 47, leaving only 46 available for general category candidates, meaning thereby the reservation would exceed 50% which would be unconstitutional. In the opinion of this Court, the rule laid down by the Apex Court in the said case would not be made applicable to the present one. In the aforesaid case, the number of candidates were much high and applying the rule of rounding off in such a case was not violative of any existing rules meant for the purposes of providing reservation. In the present case, if we allow the rule of rounding off to be applied by treating 0.6 as 1 then certainly it shall be violative of rules of 1997 as the aforesaid rules clearly provide for horizontal as well as vertical reservation to the extent of 30% only, and this statutory requirement cannot be substituted or frustrated by applying the rule of rounding off based on logic and common sense. It shall amount to violation of the statutory rules. The judgment of the Apex Court is distinguishable on this point and the argument advanced by counsel for the private respondents cannot be accepted.

19.2 In the second case cited by learned counsel for the respondents the Apex Court held vide para 14 that Article 15(3) of the Constitution enables the State Government to make special provisions for women and children notwithstanding the prohibition

contained in Article 15(1). The Apex Court further held that particularly viewed in the back ground of the fact that a large number of young girls below the age of 10 years were taught in the primary school and recognizing that it would be preferable that such young girls are taught by women, the reservation of 50% of the posts in favour of the female candidates was held to be justified. The Apex Court confirmed the judgment of the Division Bench of the High Court and held that the classification made was justified and cannot be styled as arbitrary or liable to be hit by Article 14. This was a verdict when the Govt. of Uttar Pradesh had taken a decision by an order that 50% of the candidates to be selected shall be from science stream and 50% from the arts stream and further 50% would be female candidates and 50% would be male candidates. It was not a case of violation of any statutory rules framed by the Government rather it was a case of a decision by the Government in a particular facts and circumstances of the case to which the Apex Court said to be justified and the classification made was not hit by Article 14. In the present case, the Government itself made a rule for reservation in horizontal as well as vertical manner to the extent of 30% and if an action of Government or the authorities violates these rules, then the action cannot be held to be justified. The aforesaid judgment cited by the learned counsel for the respondent is not helpful to him in the facts and circumstances of the present case particularly the circumstance when the rules in this regard are existing and the permissible limits of horizontal and vertical reservation have been specifically prescribed in the rules.

19.3 In the result, the selection of Smt. R.Bambra showing it to be against the reserved post for women is not justified, as no reserved post for women in general category was available with the Commission and the two posts available with the Commission were to be treated as unreserved general post as per their own declaration vide corrigendum dated 17.5.2004 and also under the aforesaid rules. Her selection against such post is set aside.

POINT No.3

20. In many of the petitions, this ground has been taken by the petitioners that the post of Vice Principal is not an administrative post, therefore, the persons who have been working as Vice Principals should not be held to be eligible for selection to the post of Deputy Directors claiming 3 years requisite experience on administrative side. Rule 8 of Rules 82 provides for conditions of eligibility for direct recruitment. Sub Rule (2) of Rule 8 provides about educational qualifications. It provides that the candidates must possess the educational qualifications prescribed for the service as shown in Schedule III.

20.1 A perusal of Schedule III would show that for the post of Deputy Director, 10 years experience in administration and teaching at the higher secondary level of which at-least 3 years must be on the administrative side has been prescribed as the requisite experience in addition to the educational qualification prescribed therein.

20.2 The return of the Public Service Commission filed in W.P.No. 433/2005 would show that when the commission, sought for clarification from the Government about the administrative posts by sending a communication dated 17.10.2003, the D.P.I.

sent his reply dated 19.11.2003 (Annexure R-2(2) that the post of Vice Principal was not held to be an administrative post. It is also stated in the return that during the scrutiny, it was further realized that several posts connected with education department on which the persons were on deputation or otherwise, have also claimed their entitlement/eligibility to appear in the selection process then the Commission again sent the communication dated 27.7.2004 (Annexure R-2(3) to the State Government seeking information specifically with regard to several posts like Assistant Director (non-formal Education), Assistant Director (Adult Education), District Project Organizer, Rajeev Gandhi Shiksha Mission, Project Officer (non-formal Education), House Master of Navodaya Vidyalaya, Vice Principal of the Higher Secondary School, Hostel Superintendent etc. Thereafter, the Ministry of School Education Department, Govt. of Chhattisgarh informed the Commission by sending a communication dated 09.8.2004 (Annexure R/2(4)) to the effect that the posts referred to in Annexure R-2(3) are administrative posts. Therefore, finally the contention of the State Government is that the post of Vice Principal is an administrative post.

20.3 The submission of learned counsel for the petitioners is that the post of Vice Principal is not a cadre post nor it can be the administrative post, therefore, experience as a Vice Principal would not be counted for eligibility to the said post. It is also submitted that once the Assistant Director of the Directorate vide his memo dated 19.11.2003 had said that the post of Vice Principal would not be the administrative post then another letter

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of the Government dated 09.8.2004 stating that it would be an administrative post, was not justified.

20.4 If we see the provisions of rules of 1982, the Schedule itself indicates about an experience of teaching in the higher secondary school level, out of which 3 years must be on the administrative side. The words 'administrative side' or the 'administrative experience' *or* 'administrative posts' have not been defined in the Rules.

In ***Black's Law Dictionary (7th edition page 44)***, the word "administration" has been defined as *"the management or performance of the executive duties of a Government, institution or business"*. The word is a noun and the word administrative flowing out of this word is an adjective.

In ***Corpus Juris Secondum (Vol.II), which is a Restatement of the American law, developed by Arnold O. Ginnow and George J. Balluff, (2nd reprint-1987)*** the words "Administration" and "Administrative" have also been stated as under:

ADMINISTRATION

> *"As generally understood, "administration" means management, direction, or supervision; and in its broad general sense it is defined as the act of administering; direction or oversight of any office, service, or employment, etc.; managing or conduct of an office or employment; the performance of the executive duties of an institution, business or the like. "*

ADMINISTRATIVE

> *"No precise and invariable definition of the word can be given. Its meaning depends upon the particular facts and circumstances, and a definition given is sometimes no more than a description.*

"Administrative" is defined as meaning ministerial; of or pertaining to administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of person or things; pertaining to administration, particularly, having the character of executive or ministerial action; and, when particularly applied to official duties connected with government, executive, a ministerial duty; one in which nothing is left to discretion. The word has been held to mean having to do with daily affairs as distinguished from permanent matters; and when applying to agencies of government that combine legislative, executive, and judicial functions, it has been said to mean administering details which may be of a legislative character."

(Only selected statements have been quoted from page No.78 & 79)

20.5 Therefore, in a general sense, a person who has been assigned with a work of management or performance of the executive duties of an institution shall be held to be assigned with the work of administration and would be designated to hold an administrative post.

20.6 The Madhya Pradesh Shiksha Sanhita, which is a collection of rules for administration of the Education Institution run by the Government also defines two important words vide rule 2 (ten) and 2 (eleven). Rule 2 (ten) defines ***Sansatha Pramukh*** and Rule 2(eleven) defines ***Sansatha***. The definitions in Hindi are quoted as under:

"(दस) "संस्था प्रमुख" से तात्पर्य, ऐसे व्यक्ति से है जो तत्समय संस्था का प्रशासनिक प्रभारी हो, भले ही उसे किसी भी नाम से जाना जाता है;

(ग्यारह) "संस्था" से तात्पर्य ऐसी शाला या अन्य शिक्षा संस्था से है, जो विभाग द्वारा चलाई जाती हो या मान्यता प्राप्त हो और जो (क) पूर्व प्राथमिक, प्राथमिक, पूर्व माध्यमिक या उच्चतर माध्यमिक स्तर पर या (ब) किसी प्रशिक्षण महाविद्यालय प्राथमिक पूर्व

माध्यमिक प्रशिक्षण संस्था में या (ग) किसी विशेष शाला के रूप में शिक्षण देती हो;

20.7 A bare perusal of these two definitions would show that the *Sanstha Pramukh* would be the administrative incharge of the institution and he may be called by any name whatsoever it may be. The word "*Sanstha*" shows that it means a school or any other educational institution which is run by the department or which is recognized by it. That is to say that the Principal or the Headmaster, as the case may be, shall be the *Sanstha Pramukh* and shall also be the administrative Incharge of the Institution. Therefore, on the nature and character of the work assigned to the Principal, it can easily be inferred by the above definition that he is admittedly held to be holding an administrative post in his institution. The post of Vice-Principal has not been defined in *Shiksha Sa nhita.* However, in the broader sense when the occasion arises, he uses to work as the Principal or *Sanstha Pramukh* and exercises all the administrative powers of the Principal which are not prohibited by any statutory provisions. For example, a Vice Principal may act in all fields of administration for a better management of the institution in absence of the principal but he may not exercise the financial or such other powers which have been especially conferred to the Principal by virtue of certain statute or by virtue of essential delegation. This indicates that a Vice Principal is always involved in administration and the nature and character of the job which he undertakes in absence of Principal is almost one and the same which the Principal undertakes as a *Sanstha Pramukh.*

20.8 Therefore, I hold that the work of a Vice Principal is a work which he performs in the administrative side and for this purpose only, this post is held to be an administrative post and the arguments advanced by learned counsel for the petitioners that the post of Vice Principal is not an administrative post cannot be accepted and the same is accordingly rejected. So far as the arguments in relation to justification of issuance of two kinds of communications by the Assistant Director and thereafter by the Government is concerned, the latter statement by he Government dated 09.8.2004 has to be given wieghtage because in the inter-se expressions/admissions regarding administration, the verdict of the Government would prevail over the verdict of an authority or the directorate working under the Government.

20.9 So far as the arguments regarding the post of Vice Principal not being a cadre post is concerned, the rules of 1991 namely ***M.P.School Shiksha, Zila Shiksha Evam Prashikshan Sansthan (Rajpatrit) Sewa Bharti Niyam, 1991*** which have been filed as Annexure P-15 in W.P.No.433/2005 are referable. According to Rule 5 and Rule 6 of these rules, Schedule-1 has been annexed and the posts mentioned in the schedule have been declared as the classified posts in which the post of vice principal finds place. This rule may be for a particular kind of institution but it shows the existence of post of vice-principal in the school education department and there is no dispute that the persons are working as vice-principal in Higher Secondary Schools also. This argument has no force and the same cannot be accepted.

20.10 Accordingly, I hold that the persons who had worked as Vice Principal for the requisite period, as defined under

Schedule III of the aforesaid Rules of 1982 shall be deemed to have been worked on the administrative side for the purposes of experience and requisite qualification thereunder.

POINT NO.4

21. The selection of Shri Hemant Upadhyaya who has been selected as Deputy Director in general category has also been challenged on the ground that he was more than 38 years of age as is required under sub-rule(1)(c)(i) of Rule 8 of the Rules of 1982. Learned counsel for the petitioner relies on the copy of the rules filed at Page No.76 in W.P.No.433/2005. It appears that the unamended rules have been filed by the petitioner. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the following amendment in the rules of 1982 have been made :

AMENDMENT

In the said Rules a note may be inserted as follows after clause (i) of sub-rule 8—

> "**Note**.—The candidate who is permanent teacher in School Education Department would be allowed to deduct from his age the total period spent in teaching in Government institution subject to the proviso that the resultant age does not exceed the upper age limit prescribed for the post.
>
> *(Published in M.P. Rajpatra Part IV (Ga) dt. 26.9.86 Pg. 192).*

21.1 If we see the schedule annexed to these rules showing the minimum and maximum age limits for the post of Deputy director, it would appear that in Schedule-III according to rule 8, the maximum age limit has also been prescribed as 40 years and the same has been prescribed in the advertisement also. More over, the return of respondent no.5 filed in W.P.No.433/ 2005 vide

para 4 would show that the date of birth of the said respondent is 30th June 1964. Therefore, according to these rules, he should not be more than 40 years on 01.01.2004. It is apparent that he was not more than 40 years on 01.01.2004, hence, his selection cannot be assailed on this ground. The arguments advanced by learned counsel for the petitioner are misconceived and the same cannot be accepted.

POINT NO.5

22. It is argued that the method of selection adopted by the Public Service Commission was not proper as only interviews were taken and even in interviews, less meritorious candidates have been selected. Column No.11 of the advertisement lays down about the method to be adopted in selection. It provides that if the number of application forms received by the Commission would be relatively less and in the opinion of Commission a written examination would not be necessary then the posts may be filled in only on the basis of interview conducted by the Commission. However, if the number of the application forms would be more than the ratio of the post advertised and it would not be practicable for the commission to interview each of the candidates then the commission may arrange for the written examination to reduce the number of candidates to be called for interview in the ratio of 1: 3 and in such a case the marks obtained in the written examination and in the interview would be taken into account and the selection would be made. It has also been mentioned that if the commission takes a decision for conducting a written examination, then, the candidates would be liable to pay the examination fee. This column in the advertisement shows a clear

pre-determination of the Commission about the method of selection. The commission has clearly stated that the written examination would be conducted only in case of more number of forms received by the Commission. The reply of the Commission would show that when the number of forms received by the commission were found to be less, a meeting of the commission in this regard was held on 08.10.2004 and a decision was taken to conduct interviews only. A copy of the minutes of the meeting dated 08.10.2004 has been filed as Annexure R-2/5 in W.P.No.433/2005. None of the parties could show any law in relation to the mode of selection to be adopted by the P.S.C. Therefore, the action of the commission to take a decision for making selection by interview only has to be examined in light of terms of advertisement mentioned in Column No.11. This column clearly indicates that a decision in regard to the mode of selection will be taken by the Commission on the basis of prevailing facts particularly with reference to the number of forms and if the commission has taken a decision vide its meeting dt. 08.10.2004 then the act of Commission must be deemed to be in terms of the provisions of column no.11. It cannot be said that such a decision taken by the Commission, in absence of challenge to this decision on the basis of any act or rules is illegal or arbitrary.

22.1 For examining the merits of decision taken by P.S.C. to hold interviews only, we must look into the following decision of the Apex Court. While dealing with the matter in case of ***Lila Dhar -Vs- State of Rajasthan and others (1981) 4 SCC 159*** the Supreme Court held that ordinarily, recruitment to public services is regulated by rules made under the proviso to Article 309 of the

Constitution and it is not for the courts to redetermine the appropriate method of selection and the relative weight to be attached to the various tests, unless exaggerated weight has been given with proven or obvious oblique motives. In this case, the Apex Court referring to the decisions reported in ***A. Periakaruppan Chettiar –vs- State of Tamil Nadu (1971) 1 SCC 38 and Ajay Hasia Vs. Khalid Mujib Sehravardi, (1981) 1 SCC 722*** held that the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. But there cannot be any rule of thumb regarding the precise weight to be attached respectively to the written test and the interview. It must vary from service to service according to the requirement of the service to which recruitment is made, the source-material available for recruitment, the composition of the Interview Board and several like factors. In the case of admission to a college, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination, and there the importance to be attached to the interview-test must be minimal. Therefore, the ratio of the decisions in *Periakaruppan* and *Ajay Hasia* cases in this regard cannot be applied in case of services to which recruitment has necessarily to be made from persons of mature personality. In such services interview test may be the only way, subject to basic and essential academic and professional requirement being satisfied. However, in many services where sound selection must combine academic ability with personality

promise, some weight has to be given, though not much too great weight, to the interview test. The apex Court further held in this case that mode of awarding marks in an interview test is an administrative function with which courts normally should not interfere. In the absence of any rule for awarding marks separately under different heads, the apex court held that, the award of marks in a single lot would not vitiate the interview test.

22.2 This view was again upheld by the Apex Court in the matter of ***Dr.Keshav Ram Pal –Vs- U.P. Higher Education Services Commission, Allahabad and others, (1986) 1 SCC 671*** that if the marks are not separately allocated under the separate heads in a selection post on academic attainments, teaching experience, administrative experience and suitability, selection would not be held arbitrary in the absence of such sub-division.

22.3 If we examine the present case in the light of the above decisions rendered by the Apex court on various points of time, first of all, the relevant factor would be the nature of post for which the selection was made. All these posts namely Deputy Director, Principal (DIET) and the Professor (*Shiksha Maha Vidyalay Samvarg*) are the posts meant for the persons of mature personality as they have to perform the work of imparting education of high importance, and also the work of administration and for this reason only, the Legislature in all its wisdom has not kept these posts to be filled in from the fresh candidates, but the experience and other qualities of long tenure have been set up as the requisite qualifications and if in such cases of selection, the Commission has taken a decision for making selection on the basis

of interviews only, then it cannot be said that the decision taken by the Commission was illegal or arbitrary. In the opinion of this court, since the recruitment has necessarily to be made from persons of mature personality, the Commission was right in adopting the way of interview test instead of a written examination, particularly in the circumstance when the number of application forms were relatively less. The action taken by the Commission is neither unjust nor improper nor it goes against any act or rules nor the same is against the conditions of advertisement, referred to above.

22.4 So far as the ground in relation to selection of less meritorious candidates is concerned, I would like to refer to a decision of the Apex Court rendered in the matter of ***The Chancellor and another – Vs- Dr. Bijayananda Kar and others (1994) 1 SCC 169,*** in which the Apex Court held that the decisions of the academic authorities should not ordinarily be interfered with by the Courts. Whether or not a candidate fulfils the requisite qualifications is a matter which should be entirely left to the decision of the academic bodies and the concerned selection Committees which invariably consist of experts on the subject. Here also, none of the petitioners have challenged the constitution of selection committee, nor there is any allegation in relation to the expertise of the members. The Commission has stated that the Boards consisted of retired Addl. Director, Vice Chancellor of Pt. Ravi Shankar University, Raipur, Retired Dean and HOD, Retd. Deputy Secretary, School Education, Ex-Vice Chancellor, Principal, BTI Principal and Ex-Additional Director, Higher Education, Vice Chancellor, Guru Ghasidas University, Bilaspur, Rector and

Chairman, Regional Education and Research School of Ravi Shankar University and Ex-Vice Chancellor, have taken the interviews. More over all these points are being raised by the petitioners after taking a chance in interview.

22.5 In the facts and circumstances, I do not find any merit in the arguments advanced by learned counsel for the petitioners under this point and the same cannot be accepted. The process of selection adopted by the Public Service Commission is held to be in order.

POINTS No.6 & 8

23. These points relate to the select list for the post of Principal (DIET). The challenge is made vide W.P.No.598/2005 on the ground that Sadhana Agrawal, Ghan Shyam Netam, Hemand Upadhyay and Probodh Adhikari, were not having requisite experience for this post, therefore, the selection is improper. There were two posts of Principal (DIET), one in general category and one in Scheduled Tribe category. Sadhana Agrawal has been selected in general category and Ghan Shyam Netam has been selected in S.T. category. Other two remaining persons were kept as Serial No.1 & 2 in the supplementary list (waiting list). It is submitted that Sadhana Agrawal was working as Principal in High School and not in higher secondary school, therefore, she would not be held to be fulfilling criteria no.1-KA(3) of Clause No.2 of the advertisement. The reply of Sadhana Agrawal vide Para 5 reflects about her educational qualifications and experience. She has admitted in her reply vide para 5 that she was Principal in High School from 1999 to 2003 and it has been contended that the words used as "Senior Madhyamic School" in the advertisement

means "High School" and not the "Higher Secondary School", therefore, she was eligible for consideration. I have examined this point carefully. The rules governing appointment to this post are the rules named as ***The M.P. School Education District Institute of Education and Training (Gazetted) Service Recruitment Rules, 1991.*** Rule 8 of these Rules provides for conditions of eligibility of direct recruitment. Sub-rule (ii) of Rule 8 provides about the educational qualifications and it has been mentioned therein that a candidate must possess the educational qualifications prescribed for the service as shown in Schedule III. In experience column of Schedule III, Clause (iii) provides for "educational administration at least of the level of principal of a 'higher' 'senior' secondary school or project officer of AE/NFE or district level responsibility in Women's development or Teaching B.Ed.,/M.Ed., classes." The word ***Madhyamic Shiksha*** has been defined under rule 2 (ठ) of the M.P. Madhyamik Shiksha Adhiniyam 1965, which reads as under:

> *"(ठ) "माध्यमिक शिक्षा" से अभिप्रेत है ऐसी शिक्षा जो मिडिल स्कूल शिक्षा के प्रक्रम के ठीक पश्चात् आती हो और भारत में विधि द्वारा स्थापित विश्वविद्यालयों द्वारा नियंत्रित शिक्षा के प्रक्रम के ठीक पूर्व तक चलती हो;*
>
> *तथा उसमें विश्वविद्यालय द्वारा नियंत्रित शिक्षा के प्रक्रम का वह भाग सम्मिलित है जिस तक कि इन्टरमीडिएट परीक्षा के नाम से ज्ञात परीक्षा धारा के अधीन निरस्त किये गये अधिनियम के अधीन स्थापित तथा गठित मण्डल द्वारा इस अधिनियम के प्रारंभ होने के पूर्व संचालित की जाती थी ।"*

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23.1 The Regulations of the Board of Secondary Education, M.P. 1965 have also been framed and approved by the Government in exercises of powers conferred under sub-section (4) of Section 28 of the aforesaid Adhiniyam 1965 and the words "High School" and "Higher Secondary School" and "Principal" have been defined in chapter I as Regulation 2(12), (13), and (15), which are quoted as under:

> (12) "High School" means an educational institutions which is not a college preparing candidates for the High School Examination of the Board and recognized by the Board for such purpose.
>
> (13) "Higher Secondary School" means an educational institution preparing candidate for a Higher Secondary School Certificate Examination of the Board and recognized by the Board for such a purpose.
>
> (15) "Principal" means the Head of a College or a Higher secondary school or a Multipurpose Higher Secondary School recognized by the Board.

In M.P. Shiksha Sanhita, in addition to many other words, ***"Purv Prathmik Shala"***, ***"Prathmik Shala"***, ***"Purv Madhyamik Shala"***, and ***"Uchhtar Madhyamik Shala"*** have also been defined as under:

> *"(बारह) पूर्व प्राथमिक शाला" से तात्पर्य ऐसी शाला से है, जहां सामान्यतया ऐसे बालक शिक्षा पाते हैं जिनकी आयु 2–1/2 वर्ष से कम नहीं है और 6 वर्ष से अधिक नहीं है,*
>
> *(तेरह) "प्राथमिक शाला" से तात्पर्य ऐसी संस्था से है, जहां पांचवीं कक्षा तक शिक्षा दी जाती हो;*
>
> *(चौदह) "पूर्व माध्यमिक शाला" से तात्पर्य ऐसी संस्था से है, जो प्राथमिक शिक्षा स्तर के ठीक बाद और उच्चतर माध्यमिक शिक्षा स्तर के ठीक पहले स्तर तक शिक्षा देती हो;*

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(पन्द्रह)"उच्चतर माध्यमिक शाला" से तात्पर्य ऐसी संस्था से है, जहां पूर्व माध्यमिक शाला शिक्षा स्तर के ठीक बाद और विधि द्वारा स्थापित विश्वविद्यालय द्वारा नियंत्रित शिक्षा के ठीक पूर्व के स्तर की शिक्षा दी जाती है;"

23.2 Therefore, the Government in all its wisdom has classified the educational institutions of the State, imparting education right from preprimary to the beginning of the University education under these five categories on the basis of their character about imparting education upto the classes specified calling them as Preprimary School (Purv Prathmik Shala), Primary School (Prathmik Shala), Middle School (Purv Madhyamik Shala) High School (Madhyamik Shala) and Higher Secondary School (Uchhattar Madhyamik Shala). The definition of "high school" given in Regulations of Board of secondary Education would show that in those institutions, the candidates are prepared for high school examination of the Board and this institution is recognized by the Board for such purpose only whereas a higher secondary school is an educational institution, which prepares for a higher secondary certificate examination and the said institution is recognized by the Board for such purpose. So far as the word "Principal" used in the Regulation is concerned, it has clearly been mentioned in the regulations that it would mean the head of the college or a Higher secondary school or multipurpose Higher secondary school which is recognized by the Board. All this discussion would show that the institution High School and Higher Secondary School are the two different educational institutions classified according to the nature of their constitution with respect to the teaching of the candidates for preparation of

different categories of examinations and the principal or head master or head of the High School, though is not defined, cannot be deemed to be or kept at par as the principal of Higher Secondary School for the purpose of these Rules 1991 governing the cases of present appointment. Therefore, I hold and conclude that Sadhana Agrawal who was a principal of High School was having no requisite experience as per Schedule III of the aforesaid Rules for the post of Principal (DIET). Her appointment has to be set aside on the ground of lack of experience and the same is set aside accordingly.

23.3 So far as Hemant Upadhyaya and Prabodh Adhikari are concerned, the ground has been taken that both of them do not have experience as per para 1(ka) of Clause 2. How they are lacking in experience has not been pleaded by the petitioner. However, respondent no.4 has pleaded vide para 5 of his reply that he is a postgraduate in Geography with first division and has also done B.Ed., and M.Ed., with first division. He was having 10 years of experience in teaching as lecturer. He has further pleaded that he had worked as a Principal from 19.9.1997 to 2001. But, he has not clarified as to whether he was working as a Principal in a High School or in Higher Secondary School, therefore, according to these pleadings, it is not possible for this Court to say as to whether he was in fact holding the requisite experience for this post or not.

23.4 As far as respondent no.5 namely Prabodh Adhikari is concerned he has also not pleaded regarding his experience. He has only stated vide para 5 of his reply that he had done B.Ed., and M.Ed., with first division and has worked as lecturer from

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13.8.1998 to 23.10.2001. Though he mentioned the word as "principal" in this para, no details have been furnished. In the facts and circumstances of this case, nothing can be said about his eligibility also on the basis of his own pleaded qualifications.

23.5 The selection of Ghan Shyam Netam for the post of Principal (DIET) against the reserved S.T. category has also been challenged in W.P.No.312/2005 vide para 5.16 on the ground of lack of experience. Reply to interim application has been filed on behalf of this respondent, but in the said reply he has not stated as to how he was fulfilling the requisite qualifications of experience etc. He has not filed his return in this case and no arguments showing his eligibility were advanced at the time of hearing, therefore, his case is also similar to the case of Hemant Upadhyay and Prabodh Adhikari and nothing can be said about his eligibility also on the basis of records available before this Court. Even the Public Service Commission has not pleaded anything about the allegations made by the petitioners against these respondents. Therefore, in the facts and circumstances of this case, since the matter relates to basic statutory qualification and it goes to the root of selection, I deem it proper to issue a direction to the Commission to examine their educational qualifications and experience by re-scrutinizing their individual case with a view to find out as to whether they possess the basic statutory qualification and experience as per Schedule III of the aforesaid Rules of 1991 or not. Their result about section would be subject to the scrutiny made by the Commission.

POINT No.7

24. This relates to challenge of selection of Shri Gand Ram Chandrarkar who has been selected as the Deputy Director in other backward classes category. He is respondent no.6 in W.P.No.312/2005. It is submitted that he had not given the caste certificate, as required under the law issued by the State of Chhattisgarh and has submitted a caste certificate issued earlier to him by the then State of M.P. and after the re-organization of the State of M.P. he does not fall in the O.B.C. category being in creamy layer. It is submitted that it was obligatory on the part of this respondent to furnish a fresh O.B.C. certificate issued by the authorities of this State. This respondent has filed his return and has stated that at the time of submission of his application before the competent authority, he had submitted provisional certificate dated 01.8.2003 issued by Addl. Tahsildar, Raipur in respect of caste and creamy layer and subsequently at the time of interview he further submitted the permanent caste certificate to the public service commission which goes to show that he belongs to OBC category and does not hold the status of creamy layer as alleged by the petitioners. He has filed copies of these two documents as Annexure R-6(1) and R-6(2). These two certificates are at Page No.38 and 39 of the paper book. Annexure R-6(1) is a certificate dated 01.8.2003 issued by the Addl. Tahsildar, Raipur, vide Revenue Case No.435/B/ 121, year 2002-2003 which certifies that this respondent belongs to Kurmi caste which comes under OBC category. The other document which is a permanent certificate issued by the Sub-Divisional Officer (Town) Raipur, vide

Revenue Case No.935/B/121/2004-2005 would also show that he belongs to Kurmi caste and the same is held to be as the Other Backward Classes. These two documents have been issued by the authorities of the State of Chhattisgarh after reorganization. No rejoinder to this return has been filed by the petitioners. Therefore, the arguments advanced cannot be accepted and the same is accordingly rejected. His selection has also been challenged in W.P. No. 599/2005 on the ground that he was not having requisite experience, as he had worked as Assistant Director. Vide Annexure-R-5/1 of his return he has shown about his entire Service career. The perusal of this document would show that he had worked as Principal Higher Secondary School for 1 year, 4 months and 29 days and had also worked as District Education Officer for 2 years, 3 months and 6 days, which are the administrative posts. Apart from this he had worked on various other posts also. The arguments advanced on this ground cannot be accepted. The selection of respondent no.6 Gand Ram Chandrarkar cannot be set aside on these grounds.

24.1 The refusal of candidature of Deepak Dubey, petitioner in W.P. No. 433/2005 for the post of Principal (DIET) cannot be held to be unjustified. The contention of Public Service Commission is that according to the petitioner's own showing his educational qualification is M.A. (English Literature), B.Ed., PG Diploma in ELTI (English Language Teaching) etc. This would show that the petitioner was not M.Ed., which has been held to be the essential qualification according to the Rules. There is no force in this argument and the same can not be accepted.

IN THE RESULT,

I W.P.No.21/2005 and W.P.No.4192/2005 stand dismissed.

II W.Ps.No.599/2005, 433/2005, 598/2005, 524/ 2005, 312/2005, 287/2005 and W.P.No.718/2005 are disposed of in the following terms :

(1) The process and mode of selection adopted by the Public Service Commission is held to be in order;

(2) The appointment of Dr.Hare Ram Sharma vide appointment letter dated 22.9.2003 is hereby quashed;

2.1 However, due to this quashing, petitioner of W.P.No.624/2005 Shri Ram Niwas Singh who is at Serial No.1 in the wait list of Deputy Directors would not be treated as the selected candidate at serial no.2 automatically because the post occupied by Dr. Hare Ram Sharma was not within the purview of P.S.C.

(3) The selection of Smt. R. Bambra showing her to be selected against the reserved post for women in general category is quashed for want of such a reserved post for women in the general category;

(4) The Commission is directed to republish the select list of general category of Deputy Directors without treating one post as reserved for women candidate considering the case of Smt. R. Bambra and the case of Ram Niwas Singh, on interse merits alongwith other candidates;

(5) The selection of Sadhana Agrawal to the post of Principal (DIET) is set aside.

(6) The selection of Shri Ghan Shyam Netam, Shri Hemant Upadhyay and Shri Prabodh Adhikari pertaining to the post of Principal (DIET) shall be subject to the scrutiny of their forms by the Public Service Commission with a view to find out as to whether they possess the basic statutory qualifications and experience as per Schedule III of the M.P. School Education District Institute of Education and Training (Gazetted) Services Recruitment Rules, 1991 or not. This scrutiny shall be done strictly on the basis of provisions of the aforesaid Rules taking aid and assistance of the decision on various points rendered by this Court in this judgement.

6.1 If they fulfill the statutory qualifications and experience, their selection would be valid otherwise they will be treated as not selected.

6.2 After the scrutiny the Commission will republish the revised selection list of Principal (DIET) among the overall results of the candidates before them.

(7) The commission will undertake all this exercise within a period of 30 days from today and the revised result in these two categories as directed above shall be published within this period.

(8) The Government is free to take decision about filling up of that one post of Deputy Director, which was withdrawn by the Government, as to whether that post would be filled up through the

process of Public Service Commission or by any other mode according to the Rules.

(9) The interim order granted earlier in all the writ petitions stand vacated.

In the facts and circumstances of the case, there shall be no order as to the costs.

The original Judgment will be kept in W.P. No. 599/2005 and a copy of the same shall be placed in other cases.

Sd/-
Sunil Kumar Sinha
Judge

Rao